

**RULES OF THE
TEXAS REAL ESTATE COMMISSION
CHAPTER 535 GENERAL PROVISIONS**

§§535.1-.2(e)

A. Definitions

§535.1. Definitions. *[Adopted January 1, 2011.]*
The following terms and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--Texas Occupations Code, Chapter 1101.

(2) Business entity--A corporation, limited liability, partnership or other entity authorized under the Texas Business Organizations Code to engage in the real estate brokerage business in Texas and required to be licensed under Texas Occupations Code, Chapter 1101.

(3) Chapter 1102--Texas Occupations Code, Chapter 1102.

(4) Compensation--A commission, fee or other valuable consideration for real estate brokerage services provided by a license holder under the Act.

(5) Denial of a license--To disapprove an applicant for a broker, salesperson, apprentice inspector, real estate inspector, or professional inspector for failure to satisfy the commission as to the applicant's honesty, trustworthiness and integrity, or, if the applicant seeks registration as an easement or right-of-way agent, to disapprove an application for registration under §535.400 of this title (relating to Registration of Easement or Right-of-Way Agents).

(6) Inactive broker--A licensed broker who does not sponsor salespersons or perform any activities for which a broker license is required and who has been placed on inactive status by the commission.

(7) MCE--Mandatory Continuing Education required under the Act.

(8) Mailed--Sent by United States Mail to the last known mailing address or by email to the last known email address of a license holder under Chapter 1101 or Chapter 1102, or applicant, unless the commission is otherwise required by law to notify such persons by United States Mail.

(9) Place of business--A place where the licensee meets with clients and customers to transact business.

(10) Promptly--Three (3) calendar days unless otherwise defined in a specific chapter or section.

(11) Reasonable time--Ten (10) calendar days unless otherwise defined in a specific chapter or section.

(12) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission and is filed with the Texas Register, including 22 TAC Chapters 533, 534, 535, and 537.

(13) SAE--Salesperson Annual Education required under the Act.

(14) State--One of the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(15) Trust account--Any trust, escrow, custodial, property management account, or other account in which a licensee holds money on behalf of another person.

(16) Trust funds--Clients' money, earnest money, rents, advance fees, security deposits, or any money held on behalf of another person.

**B. General Provisions Relating to the
Requirements of Licensure**

§535.2. Broker's Responsibility. *[Adopted January 1, 1976. Amended April 14, 1998; July 1, 1999; November 26, 2002; May 18, 2003 and January 1, 2011; Ref: §1101.803]*

(a) A broker is required to advise a sponsored salesperson of the scope of the salesperson's authorized activities under the Act. Unless such scope is limited or revoked in writing, a broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly. If a broker permits a sponsored salesperson to conduct activities beyond the scope explicitly authorized by the broker, those too will be deemed to be authorized acts for which the broker is responsible.

(b) A real estate broker acting as an agent owes the very highest fiduciary obligation to the agent's principal and is obliged to convey to the principal all information of which the agent has knowledge and which may affect the principal's decision.

(c) A broker is responsible for the proper handling of trust funds placed with the broker, although the broker may authorize other persons to sign checks on behalf of the broker.

(d) A broker is responsible for any property management activity which requires a real estate license that is conducted by the broker's sponsored salespersons.

(e) A broker may designate another licensee to

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assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of licensees sponsored by the broker. Any such designation must be in writing.

(f) Listings may only be solicited and accepted in a broker's name.

(g) A broker is responsible to ensure that a sponsored salesperson's advertising complies with §535.154 of this title (relating to Advertising).

(h) Except for records destroyed by an "Act of God" such as a natural disaster or fire not intentionally caused by the broker, the following records, at a minimum, shall be maintained for at least four (4) years from the date of closing or termination of the contract in a format that can readily be made available to the commission.

(1) Disclosures;

(2) Commission Agreements such as listing agreements, buyer representation agreements or other written agreement relied upon to claim compensation;

(3) Work files;

(4) Contracts and related addenda;

(5) Receipts and disbursements of compensation for services subject to the Act;

(6) Property management contracts;

(7) Documents required by USPAP for appraisals; and

(8) Sponsorship agreements between the broker and sponsored salespersons.

(i) A broker shall maintain on a current basis written policies and procedures to ensure that:

(1) Each sponsored salesperson is advised of the scope of the salesperson's authorized activities subject to the Act and is competent to conduct such activities.

(2) Each sponsored salesperson maintains their license in active status at all times while they are engaging in activities subject to the Act.

(3) Any and all compensation paid to a sponsored salesperson for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.

(4) Each sponsored salesperson is provided on a timely basis, prior to the effective date of the change, notice of any change to the Act, Rules, or commission promulgated contract forms.

(5) In addition to completing statutory minimum continuing education requirements, each sponsored salesperson receives such additional educational instruction the broker may deem necessary to obtain and maintain on a current basis competency in the scope of the sponsored salesperson's practice subject to the Act.

(6) Each sponsored salesperson complies with the commission's advertising rules.

(7) All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are handled by the broker with appropriate controls.

(8) Records are properly maintained pursuant to subsection (h) of this section.

(j) A broker must promptly respond to sponsored salespersons, clients, and licensees representing other parties in real estate transactions.

(k) A sponsoring broker shall deliver to or otherwise provide, within a reasonable time after receipt, mail and other correspondence from the commission to their sponsored salespersons. A broker may deliver such correspondence by facsimile or email.

(l) When the broker is a business entity, the designated broker is the person responsible for the broker responsibilities under this section.

(m) This section is not meant to create or require an employer/employee relationship between a broker and a sponsored salesperson.

§535.3. Compensation to or paid by a Salesperson. *[Adopted January 1, 1976. Amended October 20, 1983; April 14, 1998; July 1, 1999 and January 1, 2011; Ref: §1101.651(b) & (c)]* A salesperson may not receive a commission or other fee except with the written consent of the salesperson's sponsoring broker or the broker who sponsored the salesperson when the salesperson became entitled to the commission or fee. A salesperson may not pay a commission or other fee to another person except with the written consent of the salesperson's sponsoring broker.

§535.4. License Required. *[Adopted January 1, 2011; Amended January 2, 2012.]*

(a) The Act applies to persons acting as real estate brokers or salespersons while physically within this state, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet, email or other medium is also considered acting within this state if all the prospective buyers, sellers, landlords, or tenants are legal residents of this state, and the real property concerned is located wholly or in part within this state.

(b) This section does not prohibit cooperative arrangements between non-resident brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this title (relating to Unlawful Conduct: Splitting Fees).

(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or salesperson to

Texas Business Entity Comparison Guide

* Please note, selection of the proper business entity is based on many factors, all of which cannot be listed here. You should consult with your CPA and attorney before forming a business entity.

Item	Sole Proprietorship	General Partnership	Limited Liability Partnership ("LLP")	Limited Partnership ("L.P." or "Ltd.")	Limited Liability Company ("LLC")	"C" Corp.	"S" Corp.
Limited liability of owners for entity liabilities	No.	No.	Yes.	Yes.	Yes.	Yes.	Yes.
Name	No requirements	No requirements	Name must contain phrase "limited liability partnership," or an abbreviation thereof.	Name must contain words "limited partnership," "limited," or an abbreviation of either.	Name must contain "limited liability company," "limited company," or an abbreviation of either.	Name must contain "corporation," "company," "incorporated," or an abbreviation of any of the above.	Name must contain "corporation," "company," "incorporated," or an abbreviation of any of the above.
Filing requirements & fees	Assumed name certificate filed with County where doing business. County filing fees vary.	Assumed name certificate filed with County where doing business. County filing fees vary.	Annual registration and filing fee of \$200 per partner paid to Texas Secretary of State; must maintain liability insurance.	Certificate of formation and filing fee of \$750 paid to the Texas Secretary of State. If incorporating General Partner, additional formation fee applies.	Certificate of formation and filing fee of \$300 paid to the Texas Secretary of State.	Certificate of formation and filing fee of \$300 paid to the Texas Secretary of State.	Certificate of formation and filing fee of \$300 paid to the Texas Secretary of State.
Ownership types	Individuals	Any	Any	Any	Any	Any	Limited
Number of owners	One	Minimum of 2	Minimum of 2	Minimum of 2 (at least 1 general partner and 1 limited partner)	Single-member LLCs are permitted in Texas	No restrictions	No more than 100 shareholders.
Classes of ownership	One	Multiple classes permitted.	Multiple classes permitted.	Multiple classes permitted, but must have at least 1 general partner and 1 limited partner.	Multiple classes permitted.	Multiple classes permitted.	Limited to 1 class of stock.
Transferability of ownership interests	Freely transferrable.	Economic interest is transferrable unless restricted by partnership agreement, but the status of partner is transferrable only if all other partners consent.	Economic interest is transferrable unless restricted by partnership agreement, but the status of partner is transferrable only if all other partners consent.	Economic interest is transferrable unless restricted by partnership agreement, but the status of partner is transferrable only if all other partners consent.	Economic membership interest is transferrable unless restricted by certificate of formation or company agreement, but the status of member is transferrable only if all other members consent, unless the certificate of formation or company agreement provide otherwise.	Freely transferrable unless restricted by certificate of formation, bylaws, or shareholder agreement.	Freely transferrable unless restricted by certificate of formation, bylaws, or shareholder agreement.
Federal Taxation (default classifications – talk to your CPA regarding available options)	Form 1040, Schedule C or E	Partnership	Partnership	Partnership	Form 1040, Schedule C or E (for single member LLCs); Partnership for multi-member, unless members take the extra step of making the election on IRS form 8832 to be taxed as a corporation ("S election").	C or S Corporation. C corporation taxed at corporate level and then at shareholder level.	S Corporation (to qualify, must meet all IRS requirements, and make timely election on IRS form 2553)
Texas Margin Tax (f.k.a. "Franchise Tax")	None.	Maybe.	Maybe.	Yes.	Yes.	Yes.	Yes.

